

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AD, ND and MD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMISHA DANIEL,

Respondent-Appellant,

and

MARIO RICE,

Respondent.

UNPUBLISHED

June 22, 2001

No. 230054

Wayne Circuit Court

Family Division

LC No. 99-381,811

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Respondent-mother appeals as of right the family court's order terminating her parental rights to AD, dob 8-27-93, ND, dob 6-25-95, and MD, dob 5-18-97, under MCL 712A.19b(3)(g) and (j). We affirm.

Respondent-mother's four children, AD, ND, MD and Derrick Daniel (dob 4-18-98), were removed from the home in August 1999, following a police investigation into allegations of physical abuse of AD and neglect. The court returned the four children to respondent-mother on September 7, 1999, on the FIA's recommendation to dismiss the petition.

On October 20, 1999, eighteen-month-old Derrick Daniel was pronounced dead at Henry Ford Hospital. On October 21, 1999, the FIA placed the three other Daniel children in foster care based on a report that Derrick had drowned in the Daniel's bathtub. Henrae Woodard, with whom respondent-mother had been living for about three weeks before Derrick's death, was charged with the murder of Derrick.

Dr. Carl Schmidt, the Wayne County Deputy Medical Examiner, concluded his postmortem report of Derrick, which was admitted at trial, as follows:

In summary, this is an 18 month old child with closed head injury with swelling of the brain and hemorrhage in the scalp indicating he was beaten. There are multiple scars on the abdomen and healing rib fractures, indicating prior abuse had taken place. There are erosions on the head, chin and chest of undetermined cause. Scars radiating from the chest erosion indicate previous trauma had occurred in the chest.

The manner of death is homicide.

Dr. Schmidt testified that Derrick had extensive subcutaneous hemorrhage on the front temporal regions of the scalp, discovered only after making incisions, which indicated Derrick had been “beaten multiple times” within the last twenty-four hours of his life. He also found subcutaneous hemorrhaging of the arms and forearms, which he opined occurred within twelve to twenty-four hours of Derrick’s death. Dr. Schmidt testified that there was intense cerebral edema, i.e., swelling of the brain, and that he could not put a number on how many times Derrick’s head was struck, but that “it was hard enough and repeatedly enough that the child’s brain swelled to the point where he died.” He testified that a fall could not have caused these injuries. Dr. Schmidt also testified that Derrick had fractures in six ribs on the right side and in three ribs on the left, which he opined were about a month old, give or take a week. Derrick also had adhesions (scar tissues) in the small bowel and mesentery that Dr. Schmidt concluded were caused by abdominal injuries that had healed and were at least six weeks old. He testified that absent some inflammation of the bowel, such as appendicitis, it is very hard to explain adhesions, and that there was no indication that Derrick had had appendicitis.

Dr. Schmidt opined that a burn to Derrick’s chest and chin could have been caused by a hair dryer and was not caused by hot water. He testified that if the burn had been caused by a hair dryer, Derrick would have had to be held down, and he doubted that a child under six could have done it.

Regarding the burn on Derrick’s chest, respondent-mother testified that it happened about a week before Derrick died, that her mother had called her at work and told her that Woodard had brought Derrick downstairs and said that MD and Derrick had been playing with the hair dryer and he had been burned. She testified that she treated the burn with ointment, but did not take Derrick to the doctor because she was afraid the children would be taken from her again. Respondent-mother testified that she knew that Derrick had a bruise on his foot, and that that incident had happened about two weeks before his death. She testified that she had no idea Derrick’s ribs had been broken or that he had injured his stomach. Respondent-mother was at work when Derrick was taken to the hospital on the day he died.

When respondent-mother began working in the morning, Woodard watched her children and was their full-time babysitter. Respondent-mother testified that she never saw Woodard either discipline or hit any of her children, and that he never admitted hitting any of the children. She denied that the children ever told her that Woodard had hit them or whipped them. She testified that other than Woodard, her mother, sister and friends watched the children when she was not there.

The court terminated respondent-mother’s parental rights under the following provisions:

Sec. 19b.(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

I

Respondent-mother argues that she was denied due process of law and a fair trial when the trial court found that clear and convincing evidence was presented to terminate her parental rights. She argues that the FIA presented testimony of two physicians who testified they examined Derrick and were not aware from their external examinations of Derrick of the extensive internal injuries found by the medical examiner and those internal injuries were found to be the cause of death. Yet, the referee that presided over trial and authored the permanent custody petition essentially found that since there was almost no uninjured place on Derrick's body, respondent-mother failed to protect him from injury and lacked insight into her need to protect him, and terminated her rights to her three older children.

A

To terminate parental rights, the court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once a statutory ground for termination has been established, termination of parental rights is mandatory unless the court finds that termination clearly is not in the child's best interests. *Id.* at 356-357, MCL 712A.19b(5); MSA 27.3178(598.19b)(5). This Court reviews for clear error both the lower court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest. *Trejo, supra* at 356-357.

Respondent-mother has not addressed the statutory grounds under which her parental rights were terminated. Her brief on appeal focuses on her not knowing that Derrick had sustained internal injuries, ignoring the many externally-visible injuries on Derrick's body, some of which the doctors opined had been sustained weeks before Derrick's death. The physicians did testify that some of the internal injuries found on autopsy of Derrick, broken ribs on both sides of his body, and intestinal adhesions, were not visible, but there was a great deal of testimony regarding visible external injuries, including blisters on the buttocks, likely caused by burns, and marks on the neck, arms, and feet.

The record supports that when Derrick was examined on October 6, 1999 at Henry Ford Hospital, nothing unusual was noted on his body. However, there is ample evidence in the record to support that Derrick sustained visible injuries between October 6, 1999 and October 20, 1999, that would have been visible to respondent-mother, other than the three injuries she acknowledged being aware of at trial. The record supports that many or most of Derrick's visible injuries occurred after the FIA's intensive intervention in August and September 1999. Respondent-mother did not take responsibility for injuries to Derrick's feet, did not seek medical treatment for his burn, or question whether the children were being adequately cared for when it happened, and earlier had not taken AD for medical treatment when she was burned. Respondent-mother permitted the children to remain under Woodard's care without questioning the adequacy of that care despite Derrick's physical condition.

In *In re Parshall*, 159 Mich App 683, 690; 406 NW2d 913 (1987), this Court noted that "[p]arental rights may be terminated on the basis of neglect where, although one parent does not personally abuse the child, that parent permits an environment to continue where children will likely be abused." See also *In re Miller*, 182 Mich App 70, 73-74; 451 NW2d 576 (1990) (rejecting the respondent-mother's argument that original petition was insufficient as to her because she did not perpetrate abuse and reported abuse).

We conclude that there was clear and convincing evidence that respondent-mother failed to provide proper care or custody of Derrick, and that the three children would be harmed if returned to her home. The trial court's factual findings were not clearly erroneous and respondent-mother's sufficiency of the evidence and due process arguments fail.

Affirmed.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins